

Ruling 422-10-2

Issued: July 9, 2010

Effective: July 9, 2010

Ruling 422-99-7 is withdrawn and replaced by this ruling.

A ruling has been requested concerning the application of New Mexico's Gross Receipts and Compensating Tax Act to the following factual situation:

X is a corporation engaged in selling machine tools to customers in a marketing area that includes New Mexico, Texas and certain parts of Mexico. X's corporate offices are located in New Mexico, along with a small showroom and warehouse facility. X has a division office in Texas. X represents approximately 100 machine tool builders from all parts of the world.

In some cases, a customer purchases a product directly from X's New Mexico showroom. In other cases, the customer places an order for the product and the product is shipped directly from the manufacturer. Most sales orders specify that the sale is F.O.B. shipping point, which can be anywhere in the United States or Canada. A few sales are made F.O.B. destination.

All freight charges for transporting a product from the manufacturer to New Mexico are paid by the customer. X either pays the freight charges itself and passes the cost on to the customer or arranges for a "3rd party billing" or "freight collect" contract where the customer pays the carrier directly.

X asks the following questions concerning its business activities:

Question 1. Is X subject to New Mexico gross receipts tax on the following transactions and, if so, are freight charges passed on to the customer also subject to tax?

(a) X sells a product physically located in X's New Mexico showroom or warehouse to a New Mexico customer who holds (but does not use) the product for a short period of time and then ships it to the customer's operation in Mexico.

(b) X takes a sales order at its New Mexico showroom for a product that is shipped from a point outside New Mexico to a customer in New Mexico who holds (but does not use) the product for a short period of time and then ships it to the customer's operation in Mexico.

(c) X takes a sales order at its New Mexico showroom for a product that is shipped from a point outside New Mexico to X's Texas office where it is held for a short period of time (but not used) and then shipped to the customer's operation in Mexico.

Question 2. Is there any tax benefit (incentive) to a New Mexican company to utilize the Santa Teresa, New Mexico, crossing (thereby increasing trade between Mexico and New Mexico)?

Section 7-9-4 NMSA 1978 imposes an excise tax on the gross receipts of any person

engaging in business in New Mexico. “Engaging in business” is defined in Section 7-9-3.3 NMSA 1978 to mean “carrying on or causing to be carried on any activity with the purpose of direct or indirect benefit.” The term “gross receipts” is defined in Section 7-9-3.5 NMSA 1978 to include the total amount of money or the value of other consideration received from selling property in New Mexico. This includes all freight charges incurred by the seller and passed on to the buyer, but does not include freight charges the buyer pays directly to the carrier. See Regulations 3.2.1.15(C) and 3.2.1.15(D) NMAC.

By soliciting sales of machine tools in New Mexico, X is engaging in business under the definition set out in Section 7-9-3.3 NMSA 1978. The issue presented in X's ruling request is whether X's receipts are receipts from selling property in New Mexico. A sale of tangible personal property takes place in New Mexico when either title or risk of loss to the property passes to the customer in New Mexico. In this case, X's sale of machine tools may occur in one of the following ways:

Question 1(a). X sells a product physically located in X's New Mexico showroom or warehouse to a New Mexico customer who holds (but does not use) the product for a short period of time and then ships it to the customer's operation in Mexico. In this case, the sale of the product takes place in New Mexico when title and risk of loss pass to the customer, and X's receipts from the sale are subject to gross receipts tax. If the shipping costs for transporting the product from the manufacturer to X's showroom are passed on to the customer, those costs are treated as part of the sales price and are also subject to gross receipts tax. The fact that the customer subsequently ships the product to the customer's operation in Mexico does not affect the taxability of X's receipts from the sale.

Question 1(b). X takes a sales order at its New Mexico showroom for a product that is shipped from a point outside New Mexico to a customer in New Mexico who holds (but does not use) the product for a short period of time and then ships it to the customer's operation in Mexico. In this case, the sale has taken place in New Mexico when title and risk of loss pass to the customer with the delivery to the customer, and X's receipts from the sale are subject to gross receipts tax.

Question 1(c) presents the same facts as Question 1(b), except the product never enters New Mexico and is delivered to the customer's Mexico operation via Texas. X has no liability for gross receipts tax or for collection of New Mexico's compensating tax on these sales.

Question 2 asks whether there is any tax benefit or incentive to a New Mexican company to utilize the Santa Teresa, New Mexico, crossing, thereby increasing the trade between Mexico and New Mexico. The answer to this question is no.